IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1226 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ISHWRLAL KALIDAS RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1226 of 1992

[MR BIPIN I MEHTA for Petitioners.

Mr. K.M.Parikh, ASSTT. GOVERNMENT PLEADER for Respondent No. 1

MR BC DAVE for Respondent Nos.2 and 3.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 06/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioners have sought for a direction to the

respondents to extend all service benefits to the petitioners which are extended by the respondents to the employees of District cadre, Taluka cadre and employees of erstwhile municipalities converted into Nagarpalikas and for a further direction to give service benefits to the petitioners like (1) revision of pay scale and arrears of pay as per Sarela Pay Commission, Desai Pay Commission and 4th Pay Commission recommendations (2) all retirement benefits and pensionary benefits and gratuity etc. (3) appointment on compassionate ground to the dependents of the deceased employees and (4) promotion and selection grade benefits and all to give the petitioners difference of salary pursuant to the recommendations of Sarela and Desai Pay Commissions and 4th Pay Commission and all other consequential benefits therefrom. Alternatively, the petitioners have also prayed to direct the State Government to give all necessary grant and funds to respondent no. 3 Vansda Taluka Panchayat to enable it to pay all arrears of service benefits to the petitioners.

2. According to the assertions made in the petition, there was a municipality in Vansda under Bombay State before formation of the State of Gujarat. The municipality of Vansda was converted into Gram Panchayat with effect from 14.1.1955 as per the provisions of the Bombay Panchayats Act. On bifurcation of the State of Gujarat, Gujarat Panchayats Act 1961 came into effect from 1.4.63. At that time, there were 92 municipalities in the State of Gujarat. The above municipalities were converted into Gram Panchayats/Nagar Panchayats. The employees working with the respondent no. 3 Vansda Gram Panchayat are exactly similarly situated to the employees who were working in other municipalities which were converted into Gram/Nagar Panchayats. All the benefits have been extended to the employees who were working in other municipalities and who have been converted into Gram/Nagar Panchayats. The respondents are not giving to the petitioners regular salaries pursuant to the Pay Commissions' reports and the respondents are giving them only meagre amount under Minimum Wages Act which is absolutely illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India. Some of the employees of other municipalities/Gram and Nagar Panchayats filed Special Civil Application nos. 309 of 1975 challenging the action of the State Government as discriminatory. The aforesaid petition was allowed. In the case of R.K.Soni vs. State of Gujarat reported in AIR 1976, Gujarat, 76, this Court directed the State Government to decide the question of the petitioners thereof and other allowances and to pay them revised pay

scales and make suitable provisions for promotion to appropriate cadre in the State service and give them other benefits. The State of Gujarat preferred an appeal before the Supreme Court against the judgment of this Court and the judgment of this Court has been confirmed by the Supreme Court which is reported in AIR 1984, SC, 161. In the said judgment, it has been held that the panchayat service constituted under section 203 of the Panchayt Act is a civil service of the State and the members of the panchayat are government servants. It has also been observed that the High Court was justified in directing the State Government to discharge its statutory duty to make orders for equation of position and to extend benefits arising out of the reports of the Pay Commission in question. The Panchayat service consists of District cadre, Taluka cadre and local cadre. The petitioners are in local cadre. The State Government has extended all the benefits to the employees working in the District/Taluka cadres and the State Government has not given most of the benefits to the employees working in local cadre inspite of the fact that under section 203 of the Gujarat Panchayats Act, all the three cadres consists of Panchayat service. It is further stated that the State Government has been giving 100% grants to the District and Taluka Panchayats. Gram and and Nagar Panchayats are organs of the local self Government at the lowest level and they have been delegated all revenue functions of the State Government. The powers of the State Government have been extended in respect of registration of Birth and Death, Registration of Marriage and Prevention of Food Adulteration Act and those powers have been delegated to the Gram and Nagar Panchayats. The provisions of section 203 of Gujarat Panchayats Act, 1961 say that there will be uniform scales of pay and uniform conditions of service of persons employed in the discharge of functions and duties of Panchayats and there shall be constituted a Panchayat service. Various benefits have not been given to the petitioners and the persons working in the local cadre such as revision of pay scale, arrears of pay as per Sarela Pay Commission, Desai Pay Commission and 4th Pay Commission recommendations, all retirement benefits and pensionary and gratuity benefits etc., appointment on compassionate ground to the dependent of deceased employees and promotion and selection grade benefits. It is further stated that the Sarpanch of Vansda Gram Panchayat sent a letter dated 30th December, 1989 to the Development Commissioner, stating therein that Vansda Gram Panchayat was not included in the list of converted Nagar/Gram Panchayats and the benefits have not been extended. The Panchayat was not getting any grant from the State

Government. Therefore, Panchayat was not in a postiion to pay full salary to its employees. The employees of the Panchayat are not getting retirement benefits and they are also not getting the benefits which are extended to the State employees. The State Government, through section officer sent a letter dated 8th January 1999 in reply to the Sarpanch's letetr and it was stated in that letter that the decision of the Supreme Court was applicable only to those Gram/Nagar Panchayats which were converted from municipalities under section 302 of the Gujarat Panchayats Act. It is also mentioned that Vansda Municipality was converted into Gram Panchahyat with effect from 14th January, 1955 pursuant to the provisions of Bombay Gram Panchayats Act. Hence, Vansda Gram Panchayat was not included. They again addressed a letter dated 16.3.79 to the Development Commissioner requesting him to give benefits of Sarela and Desai Pay Commissions with a request to sanction the establishment of Vansda Gram Panchayat and give benefits of Sarela and Desai Pay Commission recommendations to the employees. But with some ulterior motive, the respondents have not extended all service benefits to the petitioners which have been extended to the employees of other panchayats.

3. The Under Secretary from the office of the Secretary, Panchayat, Rural Housing and Rural Development Department has filed affidavit-in-reply to the petition. It is stated therein that the petitioners are only daily wagers of the Gram Panchayat. The ratio laid down in the Supreme Court judgment reported in AIR 1984, SC, 161 is not applicable to the case of the petitioners. The petitioners are not allocated employees from Ex-municipality to Gram/Nagar Panchayat as per the Government order no. CFS-1865-1446-Ch dated 11.2.69 and as per sections 206 and 307 of the Gujarat Panchayats Act, 1961. They are neither panchayat services nor State services employees. The High Court in the case reportd in 1998(2) GLR, 1644 and in SCA No.4554 of 1993 dated 27th July, 1998 reported in 1988 GLR, 2264 has held that the petitioners are not entitled to get the benefits as prayed for in the petition. The set up of the said post was not sanctioned by the competent authority i.e. District Development Officer/Development Commissioner or State of Gujarat. As per the judgment of the Supreme Court and the Government circular dated 25th August, 1983 Gram/Nagar Panchayat is not empowered for recruitment or appointment, promotion or pay fixation. Eventhough the gram/nagar panchayat has made such procedure itself, it will be considered as cancelled. The gram/nagar panchayat is a self governing autonomous body under the provisions of the Gujarat Panchayats Act. As per section

228 of the Gujarat Panchayats Act, 1993 the establishment expenditure is met by the gram/nagar panchayat from its own funds and the gram/nagar panchayat can do such establishment expenditure upto 45% of the total annual income of the gram/nagar panchayat as per the Government resolution no. NPM-1691-467-K dated 14.9.93. The petitioners were not allocated employees as per the Government resolution no. CFS-1865-1446-Ch dated 11.2.69 and as per sections 206 and 307 of the Gujarat Panchayats Act, 1961 and nor they were recruited as per the due procedure prescribed under section 203 of the Gujarat Panchayats Act, 1961. Therefore, they are neither panchayat services nor State services employees. They are only daily wagers and they are not entitled to get the benefits as prayed for by them in the present petition. The set up of the said employees is not sanctioned by the District Development Officer/Development Commissioner or by the Government. As the petitioners werenot recruited as per theprovisions of the Gujarat Panchayats Act, 1961 and they were not allocated employees nor panchayat services employees and they are also not employees of the State Government. Hence, they are not entitled for any benefits as prayed for by them in the present petition.

Affidavit-in-reply has also been filed on behalf of the respondent no. 3.

5. Heard the learned counsel for the parties and perused the relevant papers on record. The contention of the learned counsel for the petitioners is that the petitioners have been working since many years i.e. more than 20 years and taking into consideration the provisions of section 203 of the Gujarat Panchayats Act, 1963, it is the duty of the Panchayat to make available regular pay scale to the petitioners. The petitioners are the panchayat employees. The employees of other panchayats are getting the benefits of Pay Commissions. The petitioners cannot be treated as daily wagers in the present panchayat and they will be treated as permanent employees. Hence, the benefits allowed to the employees of other panchayats should be made available to the petitioners as held in the case of R.K.Soni (Supra) and other decisions of this Court and those benefits should also be extended to the employees of the present Panchayat. In para-12 of the petition, nothing has been shown that the employees were daily wagers and this plea has been taken for the first time in the affidavit-in-reply. Hence, the plea taken by the State Government that the petitioners are daily wagers cannot be accepted at this stage.

6. I have considered the contentions of the learned counsel for the parties. In the case of R.K.Soni (Supra) reported in AIR 1984, SC, 161, it has been held that the panchayat service constituted under section 203 of the Gujarat Panchayats Act is a civil service of the State and the members of the service are Government servants. The High Court was justified in directing the State Government to discharge its statutory duty to make orders for the equation of posts and to extend the benefits arising out of the reports of the Pay Commissions in question which benefits had been denied to the local cadre only. It is also stated by the learned counsel for the petitioners that in para-23 of the said judgment of the Supreme Court, it has been observed as under:

"The Government was also empowered the cause inspection to be made and further to call for the proceedings of the Panchayat to satisfy itself as to the legality or propriety of any order made by the Panchayat. For the purpose of efficiently discharging the functions and duties of the various panchayat institutions and having regard to the three-tier system which had been established, it was apparently thought necessary to constitute a panchayat service, the members of which would have uniform scales of pay and uniform conditions of service. So a single centralised panchayat service was constituted which was to be distinct from the State Service."

The learned counsel for the petitioners also relied on the decision of this Court rendered in the case of Navinchandra Harirao Mehta vs. State of Gujarat in Special Civil Application no. 427 of 1992 dated 15.8.97. This Court in the case of Halol Nagar Panchayat issued following directions:

"In view of this concluded legal position, we are of the opinion that the present petition shall have to be allowed and we direct that a writ of mandamus shall issue directing the State Government in the terms in which the writ was issued by the Division Bench of this Court in R.K.Soni's (supra) so as to extend thebenefits relating to equation of posts, promotions, fixation of pay-scales and revision thereof on the basis of the recommendations of the Sarela and the Desai Pay Commissions. No writ is required to be issued to declare that the Gujarat Panchayat (third amendment) Act of 1978 is

> unconstitutional being violative of Article 311 and 14 of Constitution of India since it has been so declared by the Supreme Court in State of Gujarat and another vs. Ramalal Keshavlal Soni and other (supra). The State Government shall carry out these directions at the earliest but in no case later than 31st October, 1983. Rule is made absolute accordingly. There will be no order as to costs."

The ratio laid down in the case laws referred to by the learned counsel for the petitioner is not applicable to the facts of the present case inasmuch as the petitioners were not appointed as per the procedure prescribed under Gujarat Panchayats Act 1961 and the Panchayat was already converted prior to 1963 in the year 1955 under Bombay Panchayats Act. The petitioners were appointed as daily wagers. Hence, their pays and salaries remained stagnant and the petitioners could not be able to receive any benefits either of promotion or of higher grade or even revision of pay scale. They were only daily wagers. The learned counsel for the petitioners could not show that the petitioners were appointed either permanently or temporarily but from the counter-affidavits, it appears that the petitioners were appointed as daily wagers and had remained as such. They have not been given the status of regular employees. Unless they are treated as employees under Panchayat services, they cannot be allowed to receive the benefits as prayed for. In the facts and circumstances of the case, I do not find any merit in this petition

7. Moreover, this is not a petition for regularisation of the petitioners. Hence, this Court is unable to go behind the status of the petitioners as mentioned in the affidavit-in-reply. The learned counsel for the petitioners further contended that the petitioners have worked for more than 20 years and so they cannot be treated as daily wagers . I do not find any force in this contention of the learned counsel for the petitioners, inasmuch as there is no formal order either by the Panchayat or by the State Government that the petitioners are being treated as regular employees and so it is not possible to hold that the petitioners are in regular services because of the fact that the State has treated them as daily wagers.

8. In view of the above, this petition has no merit and it deserves to be dismissed. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

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